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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/532,435	09/02/2005	Gordon C. Cooper	P68.2-11888-US01	9139

490 7590 04/03/2007  
VIDAS, ARRETT & STEINKRAUS, P.A.  
6109 BLUE CIRCLE DRIVE  
SUITE 2000  
MINNETONKA, MN 55343-9185

EXAMINER
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PLUCINSKI, JAMISUE A

ART UNIT	PAPER NUMBER
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3629

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/03/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/532,435	COOPER ET AL.	
	Examiner	Art Unit	
	Jamisia A. Plucinski	3629	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☐ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____                                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date ____   | 6) <input type="checkbox"/> Other: ____                           |

### **DETAILED ACTION**

1. This office action is in replacement of Action mailed 1/17/07, please refer to previous action for signed copy of the IDS and the 892 of references cited.

#### ***Double Patenting***

2. Claims 1-10 are provisionally rejected on the ground of nonstatutory double patenting over claims 1-9 of copending Application No. 10/166,572. This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: Claim 1 of the current applicant is equivalent to Claims 1 and 2 of the '572 application

Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

#### ***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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4. Claim 24 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
5. Claim 24 recites the limitation "the same" in line 3. There is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 103***

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).
8. Claims 1-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gendreau (US 2001/0034608) in view of Dlugos et al. (5,878,379).

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9. With respect to Claims 1, 2 and 20: Gendreau discloses the use of a method and system for determining transportation charges for packages (see abstract), comprising:

- a. A reader, which identifies a package, the reader generating a signal and transmitting the signal to a microprocessor (20),
- b. A microprocessor which receives package ID and size and determines transportation charges (18),
- c. Gendreau discloses the use of a display device, See Figure 1, and computer 18, which the examiner considers to be fully capable of displaying the package parameters such as volume and weight and charge (see corresponding detailed description).

10. Gendreau discloses the use of a package sizer, but fails to disclose the package sizer having a plurality of spaced optical sensors along each of an x, y and z axis used to detect the size of a package. Dlugos discloses the use of a package sizer, with a plurality of optical sensors along the x, y and z direction for sizing a package (See Figures 1-5, with corresponding detailed descriptions, Column 7, line 52 to Column 8 line 9). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify Gendreau to include the sizer of Dlugos, in order to ensure accuracy of measurements of objects on a conveyor. (See Dlugos, abstract)

11. With respect to Claims 3 and 25: Gendreau discloses the use of a system which further includes a scale (26), where the microprocessor receives the weight and correlates the weight to the size of the package (paragraph 0021).

12. With respect to Claim 4: See Dlugos, Reference numerals 26 and 28 with corresponding detailed description.

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13. With respect to Claim 5: Dlugos fails to specifically disclose the location of the gate arm, or stop arm, of the sizer, being between the volume measuring position and a package passing position. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have the stop arm located between the volume measuring position and the package passing position, since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

14. With respect to Claims 6 and 7: Gendreau discloses the use of a display device, See Figure 1, and computer 18, which the examiner considers to be fully capable of displaying the package parameters such as volume and weight.

15. With respect to Claim 8: See Dlugos, Column 7, line 52 to Column 8, line 9.

16. With respect to Claim 9: See Dlugos, Column 8, lines 1-32.

17. With respect to Claims 10 and 26: See Dlugos, Figures 11 and 12.

18. With respect to Claims 11, 17 and 18: See Gendreau, Paragraph 0039.

19. With respect to Claim 12: See Gendreau, Figure 3.

20. With respect to Claim 13: See Dlugos, Column 7, line 52 to Column 8, line 9.

21. With respect to Claims 14 and 15: Dlugos discloses the use of sensor guards (Column 8, lines 10-33).

22. With respect to Claim 16: Gendreau discloses the use of a conveyor, however fails to disclose the use of a motor which drives the conveyor. Official notice is taken that it is old and well known in the art that motors are used to drive conveyors, in order to make conveyors automatic. Therefore, it would have been obvious to one having ordinary skill in the art at the

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time the invention was made to have a motor driving the conveyor of Gendreau in order to make the conveyor driven automatically.

23. With respect to Claim 19: See Dlugos, Column 10, lines 50-64, and reference numerals 82-88, with corresponding detailed descriptions.

24. With respect to Claim 21-24: Gendreau and Dlugos discloses the claimed invention, however fails to disclose testing the sensors upon start up and reporting any errors in the sensors. It would have been obvious to one having ordinary skill in the art at the time the invention was made to test the equipment upon start up since the examiner takes official notice that testing equipment for failures and warming up equipment, especially with optical devices, and reporting errors is old and well known in the art. This happens with copiers, fax machines and printers. It must warm up before it prints, copies etc. and will display a message if there is an error.

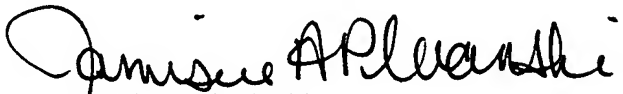
### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jamisue A. Plucinski whose telephone number is (571) 272-6811. The examiner can normally be reached on M-Th (5:30 - 4:00).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Weiss can be reached on (571) 272-6812. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Jamisue Plucinski  
Patent Examiner  
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